

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 35 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

KALAVATIBEN @ KALABEN

VITHALBHAI PATEL

Versus

JIVABHAI LAXMANBHAI MALI

Appearance:

MR JV DESAI for Petitioner
NOTICE SERVED for Respondent No. 1, 6
M/S TRIVEDI & GUPTA for Respondent No. 2
MR BR SHAH for Respondent No. 3
MR GAURANG H BHATT for Respondent No. 5

CORAM : MR.JUSTICE M.H.KADRI

Date of decision: 02/07/1999

ORAL JUDGEMENT

1. Appellant, Kalavatiben, has filed this appeal under Section 110-D of the Motor Vehicles Act, 1939, for enhancement of compensation, challenging the common judgment and award dated April 12, 1985, rendered in the Motor Accident Claims Tribunal, Main, at Surendranagar, in M.A.C.P. Nos. 295 of 1981 to 303 of 1981. The appellant is the original claimant in M.A.C. Petition No.297 of 1981.

2. On June 2, 1981, the appellant along with other persons had gone to Virpur for dharshan in an Ambassador Car bearing No. GJE 6298. The said car was driven by the original opponent No.4, and the original opponent

No.5 was the owner of the said car. The Ambassador car reached village Motiwadi at 9.30 p.m. At that time, one Truck bearing No.GTB 6513 was parked on the middle of the road. It is the say of the appellant that the truck was parked in the most negligent manner covering and occupying major portion of the tar-road in clear violation of the traffic rules. The driver of the Ambassador car was dazzled by the head light of the in-coming vehicles on the highway. The stationary truck was not having reflectors on the rear side and, therefore, the driver of the Ambassador car could not notice the stationary truck, as a result the Ambassador car dashed with the stationary truck at the rear side. There was big collision between the Ambassador Car and the stationary truck. Four passengers who were travelling in the Ambassador car, namely, Hemaliben, Dilipkumar, Jayshriben, Dimpalben and Jalpaben, succumbed to the injuries. The appellant, Kalavatiben, sustained serious injuries and she took treatment in the Primary Health Center of Chotila, and, thereafter, she was shifted to the Rajkot Civil Hospital for further treatment.

3. Kalavatiben filed M.A.C. Petition No.297 of 1981 before the M.A.C.Tribunal (Main), at Surendranagar, claiming compensation of Rs.1 lakhs for the injuries caused to her during the vehicular accident. In her application before the Tribunal, the appellant contended that she was earning Rs.1000/- per month and was looking after the family members, and that, due to the injuries, she has suffered permanent disablement. According to her, her face was disfigured and she had lost teeth due to heavy impact between the Ambassador car and the stationary truck. She stated that she had to undergo a long treatment and she was admitted as an indoor patient in the various hospitals. It is contended that she had to spend huge amount after her treatment and her family members had to remain with her at Rajkot when she was admitted to the Civil Hospital at Rajkot. Therefore, she claimed total compensation of Rs.1 lakhs in the abovestated application.

4. The original opponents Nos. 1 to 3 and 6 resisted the claims of the appellant by filing their written statements. It was contended by the opponents that there was no rashness or negligence of the driver of the stationary truck and the accident did not take place due to negligence on the part of the driver of the offending truck. The opponents further contended that the accident had taken place on account of rash and negligent driving of the Ambassador Car bearing No.GJE

5. The driver and the owner of the Ambassador car, by filing their written statements, contended that there was no negligence on the part of the opponent No.1 in driving the motor-car. They further contended that the accident had taken place due to parking of the offending truck on the middle of the road in clear violation of the traffic rules. With regard to quantum of compensation claimed by the claimants in all the claim applications, the opponents' contention was that the amounts claimed by the claimants were highly exaggerated and the claim applications be dismissed.

6. On the basis of the above pleadings, the Tribunal framed issues in all the claim applications. The Tribunal on overall appreciation of oral as well as documentary evidence led by the parties, came to the conclusion that it was a case of composite negligence on the part of the driver of the stationary truck as well as Ambassador Car as the accident had taken place due to negligence on the part of the driver of the truck as well as driver of the Ambassador car. In MACP No.271 of 1981, from which this appeal arises, the appellant, Kalavatiben, was awarded Rs.20,000/- on the head of pain, shock and suffering; Rs.10,000/- for the expenses of medicines and medical treatment; Rs.2500/- towards transport charges; Rs.2,500/- for special diet. The Tribunal has, thus, awarded compensation to the appellant at Rs.35,000/-, to be recovered from all the opponents as it was a case of composite negligence. The appellant has filed this appeal for enhancement of compensation claiming Rs.36,000/- under different heads.

7. The learned advocate for the appellant, Mr. J.V. Desai, submitted that at the time of accident, Kalavatiben was aged 34 years and she was doing house-hold work. The learned advocate for the appellant submitted that the Tribunal ought to have awarded compensation under the head of future loss of income, because Kalavatiben sustained permanent disability and she was not able to do house-hold work after the accidental injuries. In my opinion, the Tribunal has rightly come to the conclusion that there was no evidence produced by the claimant, Kalavatiben, and that, she had not suffered any monetary future loss due to accidental injuries and permanent disablement. The learned advocate for the appellant further submitted that the amount awarded under the head of pain, shock and suffering at Rs.20,000/- was on lower side and the Tribunal ought to have awarded at least Rs.30,000/- under that head. In my

opinion, amount of compensation of Rs.20,000/- awarded under the head of pain, shock and suffering is quite just, reasonable and adequate and does not call for any interference in this appeal.

8. The learned advocate for the appellant then submitted that the amount of compensation of Rs.10,000/awarded towards expenses of medicine and treatment was very meagre and the Tribunal has not taken into consideration various treatments taken by Kalavatiben in Chotila, Rajkot and from the private doctors at Madras.

9. Admittedly, Kalavatiben after the accident was treated at the Primary Health Center, Chotila, and thereafter she was shifted to the Civil Hospital, Rajkot. Due to the impact of the accident, Kalavatiben's face was disfigured and, therefore, she had taken treatment of Facial Surgeon, Dr. C.K.Dhanashekar, at Madras. It is also admitted fact that in the accident, Kalavatiben had lost teeth and she was treated by Dental Surgeon, Mr. Jaykumar, at Madras. It is also admitted fact that Kalavatiben had also taken treatment of Orthopaedic Surgeon, Mr. H.N.Patel, at Nadiad. The husband of the claimant, namely, Vithalbhai Prabhudas, had deposed before the Tribunal that he had paid Rs.9500/- to the Dental Surgeon Dr. Jaykumar at Madras. Looking to the treatment of various doctors and the period of treatment undergone, in my opinion, the amount awarded under the head of expenses of medicines and treatment at Rs.10,000/- is on a lower side. According to the evidence of Vittalbhai, who is husband of Kalavatiben, he had paid Rs.9,500/- to Dr. Jaikumar at Madras. Apart from this amount, Kalavatiben had taken treatment from Orthopaedic Surgeon, Facial Surgeon, and at Civil Hospital at Rajkot. Therefore, the amount awarded at Rs.10,000/- is also at lower side and looking to the injuries sustained by her and the prolonged treatment undergone, in my opinion, the claimant should be awarded Rs.15,000/- under the head of expenses of medicines and treatment. Therefore, I award Rs.5000/- as additional compensation under the head of expenses of medicines, and charges of various doctors at Nadiad and Madras. The amount of Rs.2500/- awarded to the claimant under the head of transportation charges is, according to me, also on the lower side. Kalavatiben at the time of the accident was residing at Madras and she had come to Gujarat for religious purpose of visiting Virpur for darshan. After the accident, she had taken treatment at Civil Hospital, Rajkot, and from Orthopaedic Surgeon at Nadiad. Thereafter, she had gone to Madras and taken

treatment and to follow up the treatment, she had again visited Nadiad. In view of her visits between Nadiad and Madras, she should be awarded compensation of Rs.5000/- under the head of transportation charge. Therefore, I award Rs.2500/- as additional amount of compensation under the head of transportation charges. The compensation awarded by the Tribunal to the claimant, Kalavatiben, under the head of special diet and gratuitous service rendered by her relatives when she was in the hospital, does not call for any interference. As a result of foregoing discussion, I am of the opinion that the appellant, Kalavatiben, would be entitled to additional compensation of Rs.7,500/under different heads as under:

Rs.5000.00 under the head of medicines and
charges of doctors
Rs.2500.00 towards transportation charges.

Rs.7500.00 (Rupees Seven Thousand Five Hundred only)

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The additional compensation of Rs.7500/- shall carry interest at the rate of 6% per annum from the date of application till realisation with proportionate costs of the claim application as well as this appeal.

10. As a result of foregoing discussion, this appeal is partly allowed. The appellant-Kalavatiben shall be entitled to recover additional amount of compensation of Rs.7500/- with interest at the rate of 6% per annum from the date of application till realisation with proportionate costs of the claim application as well as this appeal from the respondents jointly and severally as held by the Tribunal in its judgment and award dated April 12, 1985. Award be drawn in terms of this judgment. ****

(swamy)